

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-263

August 4, 2004

KENNETH TURLEY, ET AL
Request for Commission Investigation Into
The Fryeburg Water Company and its Rates,
Service and Plans for Improvements

ORDER OPENING
INVESTIGATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we open an investigation into the Fryeburg Water Company's rates, affiliated interest transactions and reasonableness of system maintenance and improvements. We also grant petitions to intervene and direct our Hearing Examiner to establish a schedule for processing this case.

II. BACKGROUND

On April 20, 2004, the Commission received a request for an investigation into Fryeburg Water Company (the Company) filed pursuant to 35-A M.R.S.A. § 1302. The petition was signed by more than 10 customers of the Fryeburg Water Company. The petition alleges that the Company's service has not been reliable; that sales to Pure Mountain Spring LLC for resale purposes may exceed the capacity of the aquifer from which the Company draws its water; that increased revenues from Pure Mountain Springs should be used to upgrade the water system or decrease rates; and that the Company should be required to develop a comprehensive plan for improvements to its system. The petitioners request that the Commission investigate rates, services and plans for improvements.

The Commission requested that the Company respond to the complaint by April 30, 2004, as required by 35-A M.R.S.A. § 1302(2). The Company filed its response on May 10, 2004. The Company claims that it has undertaken a number of improvements and it recognizes that there are problems with water quality for its customers in East Conway, New Hampshire.¹ According to its response, it intends to see if it can develop another supply source in East Conway while it attempts to clean and flush the transmission mains. Replacing the mains could cost in excess of \$400,000. The Company further claims that only recently has the resale of water and rent from Pure Mountain Springs resulted in increased revenue. It suggests that this increased revenue will be used for a variety of needed system improvements. Finally, it states

¹ On January 14, 2004, customers of the Company also petitioned the New Hampshire Public Utilities Commission concerning poor service quality for customers served in New Hampshire. Discovery is currently occurring in that case, N.H. Docket 04-020.

that it plans to have an outside firm conduct a study to determine what upgrades and improvements are necessary and to prioritize these tasks.

On July 20, 2003, Commission Staff and the Public Advocate convened a meeting in Fryeburg to see if the complaint could be resolved, as permitted by 35-A M.R.S.A. § 1302(2). No resolution was reached.

The Public Advocate filed a letter on July 19, 2004 requesting that the Commission include in its investigation an examination of whether certain affiliated interest transactions had occurred without Commission approval. These involve the swapping of wells between Pure Mountain Springs and the Company. These transactions were part of a Company request in 2002 (Docket No. 2002-207), but the Company withdrew its request in February 2004 claiming it was then moot. The Public Advocate also asks that the Commission consider reducing the Company's rates based on an analysis performed by its consultant finding that the Company had excess revenues in 2003.

III. DECISION

The petitioners claim that a plan for system improvements is necessary and that the Company is over earning and such earnings should either be used to make system improvements consistent with such a plan or reduce rates. The Public Advocate also directs our attention to possible affiliate transactions that have not been approved by the Commission. We cannot find that the cause of the complaint has been removed or that the complaint is without merit. Therefore, we will open an investigation into these matters.

Our hearing examiner will establish a schedule for processing this case. Rev. Kenneth Turley, lead complainant, is hereby made a party to this case to represent the signers of the petition. Petitions from the Public Advocate and the Town of Fryeburg are also granted. Mr. and Mrs. Swett, New Hampshire customers, signed the petition filed by Rev. Turley and also filed a separate petition to intervene. Their petition is granted and consolidated with that of Rev. Turley. The Office of Consumer Advocate of the State of New Hampshire requested to intervene as a party to represent the interests of the Company's 67 customers residing in New Hampshire. Its petition is granted.

Dated at Augusta, Maine, this 4th day of August, 2004.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud
Acting Administrative Director

COMMISSIONERS VOTING FOR:

- Welch
- Diamond
- Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.